

## Federal Trade Commission

## § 802.23

pursuant to Section 7A(a)(2)(a) of the Act. “A” now holds \$58 million of voting securities of B. Because §802.21(a)(2) is no longer satisfied, the acquisition of any additional voting securities of B will require a new filing because “A” will hold voting securities valued in excess of the \$57 million notification threshold. If, however, the \$50 million notification threshold had been adjusted to \$60 million at the end of the five-year period, A could acquire up to that threshold without a new filing.

4. This section also allows a person to recross any of the threshold notification levels that were in effect at the time of filing notification any number of times within five years of the expiration of the waiting period following notification. Thus, if in Example 1, “A” had disposed of some voting securities so that it held less than \$50 million of the voting securities of B, and thereafter had increased its holdings to more than \$50 million but less than \$100 million or 50 percent of B, notification would not be required if the increase occurred within 5 years of the expiration of the original waiting period.

5. A files notification at the \$50 million notification threshold and acquires \$51 million of the voting securities of B in the year following expiration of the waiting period. The next greater notification threshold at the time of filing was \$100 million. In year three, the \$100 million notification threshold has been adjusted to \$106 million. A can now acquire up to, but not meet or exceed, voting securities of B valued at \$106 million. As the original \$100 million threshold is adjusted upward in years four and five, A can acquire up to those new thresholds as the adjustments are effected.

6. A files notification at the \$50 million threshold in January of year one. In February of year one, the \$50 million threshold is adjusted to \$52 million. A only needs to acquire in excess of \$50 million of voting securities of B, not in excess of \$52 million, to have exceeded the threshold which was filed for in the year following expiration of the waiting period (see §803.7). It may then acquire up to the next greater notification threshold (as adjusted) during the five years following expiration of the waiting period.

(b) [Reserved]

[43 FR 33544, July 31, 1978, as amended at 66 FR 8693, Feb. 1, 2001; 67 FR 11906, Mar. 18, 2002; 70 FR 4995, Jan. 31, 2005; 76 FR 42482, July 19, 2011]

### § 802.23 Amended or renewed tender offers.

Whenever a tender offer is amended or renewed after notification has been filed by the offeror, no new notification shall be required, and the running of

the waiting period shall be unaffected, except as follows:

(a) If the number of voting securities to be acquired pursuant to the offer is increased such that a greater notification threshold would be met or exceeded, only the acquiring person need again file notification, but a new waiting period must be observed;

(b) If a noncash tender offer is amended to become a cash tender offer, (1) one copy of the amended tender offer shall be filed in the manner prescribed by §803.10(c) with the Federal Trade Commission and Assistant Attorney General, and (2) subject to the provisions of §803.10(b)(1), the waiting period shall expire on the 15th day after the date of receipt (determined in accordance with §803.10(c)) of the amended tender offer, or on the 30th day after filing notification, whichever is earlier; or

(c) If a cash tender offer is amended to become a noncash tender offer, (1) one copy of the amended tender offer shall be filed in the manner prescribed by §803.10(c) with the Federal Trade Commission and Assistant Attorney General, and (2) subject to the provisions of §803.10(b)(1), the waiting period shall expire on the 15th day after the date of receipt (as determined in accordance with §803.10(c)) of the amended tender offer, or on the 30th day after filing notification, whichever is later.

*Examples:* 1. Assume that corporation A makes a tender offer for 20 percent of the voting securities of corporation B and that “A” files notification. Under this section, if A subsequently amends its tender offer only as to the amount of consideration offered, the waiting period so commenced is not affected, and no new notification need be filed.

2. In the previous example, assume that A makes an amended tender offer for 27 percent of the voting securities of B, valued at greater than \$1 billion. Since a new notification threshold will be crossed, this section requires that “A” must again file notification and observe a new waiting period. Paragraph (a) of this section, however, provides that “B” need not file notification again.

3. Assume that “A” makes a tender offer for shares of corporation B. “A” includes its voting securities as part of the consideration. “A” files notification. Five days later, “A” changes its tender offer to a cash tender offer, and on the same day files copies of its amended tender offer with the offices designated in §803.10(c). Under paragraph (b) of

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this section, the waiting period expires (unless extended or terminated) 15 days after the receipt of the amended offer (on the 20th day after filing notification), since that occurs earlier than the expiration of the original waiting period (which would occur on the 30th day after filing).

4. Assume that “A” makes a cash tender offer for shares of corporation B and files notification. Six days later, “A” amends the tender offer and adds voting securities as consideration, and on the same day files copies of the amended tender offer with the offices designated in § 803.10(c). Under paragraph (c) of this section, the waiting period expires (unless extended or terminated) on the 30th day following the date of filing of notification (determined under § 803.10(c)), since that occurs later than the 15th day after receipt of the amended tender offer (which would occur on the 21st day).

[43 FR 33544, July 31, 1978; 43 FR 36054, Aug. 15, 1978, as amended at 66 FR 8694, Feb. 1, 2001]

### § 802.30 Intraperson transactions.

(a) An acquisition (other than the formation of a corporation or unincorporated entity under § 801.40 or § 801.50 of this chapter) in which the acquiring and at least one of the acquired persons are, the same person by reason of § 801.1(b)(1) of this chapter, or in the case of a not-for-profit corporation which has no outstanding voting securities, by reason of § 801.1(b)(2) of this chapter, is exempt from the requirements of the Act.

*Examples to paragraph (a):* 1. A and B each have the right to 50% of the profits of partnership X. A also holds 100% of the voting securities of corporation Y. A pays B in excess of \$50 million in cash (as adjusted) and transfers certain assets of X to Y. Because A is the acquiring person through its control of Y, pursuant to § 801.1(b)(1)(i), and one of the acquired persons through its control of X pursuant to § 801.1(b)(1)(ii), the acquisition of assets is exempt under § 802.30(a).

2. A and B each have the right to 50% of the profits of partnership X. A contributes assets to X valued in excess of \$50 million (as adjusted). B contributes cash to X. Because B is an acquiring person but not an acquired person, its acquisition of the assets contributed to X by A is not exempt under § 802.30(a). However, A is both an acquiring and acquired person, and its acquisition of the assets it is contributing to X is exempt under § 802.30(a).

(b) The formation of any wholly owned entity is exempt from the requirements of the Act.

(c) For purposes of applying Sec. 802.4(a) to an acquisition that may be reportable under Sec. 801.40 or Sec. 801.50, assets or voting securities contributed by the acquiring person to a new entity upon its formation are assets or voting securities whose acquisition by that acquiring person is exempt from the requirements of the Act.

*Examples to paragraph (c):* 1. A and B form a new partnership to which A contributes a manufacturing plant valued at \$102 million and acquires a 51% interest in the partnership. B contributes \$98 million in cash and acquires a 49% interest. B is not acquiring non-corporate interests which confer control of the partnership and therefore is not making a reportable acquisition. A is acquiring non-corporate interests which confer control of the partnership, however, the manufacturing plant it is contributing to the formation is exempt under § 802.30(c) and the cash contributed by B is excluded under § 801.21, therefore, the acquisition of non-corporate interests by A is exempt under § 802.4.

2. A and B form a new corporation to which A contributes a plant valued at \$120 million and acquires 60% of the voting securities of the new corporation. B contributes a plant valued at \$80 million and acquires 40% of the voting securities of the new corporation. While the assets contributed to the formation are exempted by § 802.30(c) for each of A and B, the new corporation holds more than \$50 million (as adjusted) in non-exempt assets (the plant contributed by the other person) with respect to both acquisitions. A is now acquiring voting securities of an issuer which holds \$80 million in non-exempt assets (the plant contributed by B), and B is acquiring voting securities of an issuer which holds \$120 million in non-exempt assets (the plant contributed by A). Therefore neither acquisition of voting securities is exempt under § 802.4. Note that in contrast to the formation of the partnership in Example 1, B is not required to acquire a controlling interest in the corporation in order to have a reportable transaction.

3. A and B form a 50/50 partnership. A contributes a plant valued at \$100 million and B contributes a plant valued at \$40 million and \$60 million in cash. Because with respect to A, the new partnership has non-exempt assets of \$40 million (the plant contributed by B), A's acquisition of non-corporate interests is exempt under § 802.4. With respect to B, the new partnership holds in excess of \$50 million (as adjusted) in non-exempt assets (the plant contributed by A), therefore B's acquisition of non-corporate interests would not be exempt under § 802.4.

[70 FR 11513, Mar. 8, 2005]